

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL COTA,

Case No. 3:21-cv-00385-MMD-WGC

Plaintiff,

ORDER

v.

COPPER HILLS YOUTH
CENTER, *et al.*,

Defendants.

This is a closed case, initially filed pursuant to 42 U.S.C. § 1983 by *pro se* Plaintiff Michael Cota, who is incarcerated at Ely State Prison in Nevada. (ECF No. 1-1.) On October 18, 2021, the Court issued an order (ECF No. 10) dismissing the case without prejudice based on Cota's failure to file a complete application to proceed *in forma pauperis* ("IFP Application") and financial certificate or pay the full \$402 filing fee by October 13, 2021, in compliance with this Court's September 13, 2021, order (ECF No. 4). Cota appealed the dismissal of his case to the Ninth Circuit Court of Appeals on October 19, 2021, and requests reconsideration of the Court's decision. (ECF No. 12.) The Court will construe¹ Cota's notice of appeal as a motion to reconsider ("Motion") the October 18, 2021, dismissal order under Fed. R. Civ. P. 60(b)(1).² (ECF Nos. 12 at 1, 14 at 1.) As further explained below, the Court will grant the Motion because Cota's IFP Application and financial certificate were filed under the incorrect case number.

A party may bring a motion to reconsider under Fed. R. Civ. P. 60(b) if they can demonstrate "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud or other misconduct; (4) a void judgment; (5) a satisfied or

¹The Ninth Circuit issued an order suggesting that the Court construes it as such. (ECF No. 14.)

1 discharged judgment; or (6) any other reason justifying relief from operation of judgment.”
2 *Head v. U.S.*, Case No. 94-35608, 1995 WL 341542, at *1 (9th Cir. June 8, 1995) (citing
3 *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir.1985)). Rule 60(b) is “remedial in
4 nature” and “must be liberally applied.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253,
5 1262 (9th Cir. 2010) (citations omitted). Motions made under Rule 60(b) “are addressed
6 to the sound discretion of the trial court.” *Thompson v. Hous. Auth. of City of L.A.*, 782
7 F.2d 829, 832 (9th Cir. 1986) (citations omitted). Reconsideration of a prior decision is
8 appropriate if this Court “(1) is presented with newly discovered evidence, (2) committed
9 clear error or the initial decision was manifestly unjust, or (3) if there is an intervening
10 change in controlling law.” *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.
11 1993) (citation omitted).

12 In his Motion, Cota argues that the Court erred because he timely filed his IFP
13 Application and financial certificate on September 16, 2021, before the October 13, 2021,
14 deadline. (ECF No. 12 at 1.) Cota provides documents supporting his claim that his IFP
15 Application was timely filed. (*Id.* at 3-17.) The Court agrees with Cota. He appears to have
16 filed his IFP Application and financial certificate on September 16, 2021, but they were
17 filed under the wrong case number. See *Cota v. John Doe, et al.*, Case No. 3:21-cv-
18 00350-RCJ-CLB, ECF No. 10 (D. Nev. Sept. 16, 2021). The Court accordingly finds that
19 the case was dismissed in error due to a docketing mistake and Cota has provided
20 sufficient grounds to justify relief under Rule 60(b)(1). The Court therefore grants Cota’s
21 Motion.

22 It is therefore ordered that Cota’s motion to reconsider (ECF No. 12) is granted.

23 It is further ordered that the Court’s October 18, 2021, dismissal order (ECF No.
24 10) is vacated.

25 The Clerk of Court is therefore directed to reopen this case.

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1 The Clerk of Court is further directed to refile Cota's complete application to
2 proceed *in forma pauperis* and financial certificate under the correct case number. The
3 Court will review Cota's application to proceed *in forma pauperis* and financial certificate
4 and screen his civil rights complaint pursuant to 18 U.S.C. § 1915A.

5 DATED THIS 29th Day of October 2021.

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8 MIRANDA M. DU
9 CHIEF UNITED STATES DISTRICT JUDGE
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